IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 912 of 2000

For Approval and Signature:

HONOURABLE MR.JUSTICE A.L.DAVE
HONOURABLE MR.JUSTICE SHARAD D.DAVE

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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RANCHHODBHAI DEVJIBHAI & 1 - Appellant(s)
Versus
STATE OF GUJARAT - Opponent(s)

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Appearance :
THROUGH JAIL for Appellant(s) : 1 - 2.MS SADHANA SAGAR for Appellant(s) : 1 - 2.
Mr.L.B.Dabhi, APP for Opponent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE A.L.DAVE

and

HONOURABLE MR.JUSTICE SHARAD D.DAVE

Date : 05/07/2007

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE SHARAD D.DAVE)

1. The present appeal is directed against the judgment and order dated 29.8.2000 passed by learned Sessions Judge, Panchmahals at Godhra in Sessions Case No.319 of 1999, whereby learned Sessions Judge convicted the appellant no.1 for the offence under Sections 302 and 324 of Indian Penal Code and sentenced him to undergo imprisonment for life for the offence under Section 302 of I.P.C., and fine of Rs.250/-, in default, to undergo further simple imprisonment for six months and to undergo rigorous imprisonment for one year for the offence under Section 324 of I.P.C. Both the sentences were ordered to run concurrently. The appellant no.2 was convicted for the offence punishable under Section 302 of Indian Penal Code and sentenced him to undergo imprisonment for life for the offence under Section 302 of I.P.C., and fine of Rs.250/- , in default, to undergo further simple imprisonment for six months.

2. The brief facts of the prosecution case are that the complainant filed a complaint on 3.9.1999 that at about 8.00 hours in the morning on 3.9.1999, deceased Gopising Dala Rathwa and Jiliya Dhediya Rathwa came to the house of the complainant and were talking with her husband, at that time, the accused came with weapons like Dharia and sticks in their hands and the accused no.1 Ranchhod Devji Rathwa gave a dharia blow to Gopising Dala Rathwa on his neck and accused no.2 Bhavan Devji Rathwa gave dharia blow to Jiliya Dedhiya Rathwa on his neck. It is further stated by her that accused no.1 Ranchhod Devji Rathwa

also went to beat the husband of the complainant but he ran away and went to the house of elders of the complainant's husband and died there by committing suicide. Thereafter, the complainant Jamniben Thavrabhai Kagdabhai Rathwa gave the complaint with regard to the same and, on the basis of the same, the Rajgadh police filed a complaint being I C.R.No.90 of 1999 for the offences punishable under Sections 302, 324, 34 of the Indian Penal Code and under Section 135 of the Bombay Police Act.

3. After filing of the complaint, the police completed the investigation and filed the charge sheet against four accused before the learned J.M.F.C., Devgadhbaria. As the offences are exclusively triable by the Court of Sessions, the learned J.M.F.C., committed to the Court of Sessions, Panchmahals at Godhra.

4. The learned Sessions Judge framed the charge against the accused to which the accused pleaded not guilty and claimed to be tried. Thereafter, the learned Sessions Judge recorded the evidence led by prosecution and recorded further statement of the accused under Section 313 of Criminal Procedure Code. Learned Sessions Judge, after hearing the learned advocates for the parties and considering the evidence on record, convicted accused nos. 1 and 2 as stated above against which the present appeal is filed. However, the learned Sessions Judge acquitted the accused nos. 3 and 4 against which no appeal is filed by the State.

5. Heard learned advocate Ms.Sadhna Sagar for the appellants and learned APP Mr.Dabhi for the State.

6. Kartikkumar Rameshchandra Shah – Medical Officer has been examined at Exh.15 who performed the post-mortem of both the deceased. It can be noticed from the medical evidence that chop wound of 5″x5″x5″ was found on the back side of the neck of Gopisinh Dala Rathwa and Jiliya Thediya Rathwa and the deceased died because of hemorrhagic shock after injury. This witness specifically states that the said injuries were sufficient to cause the death of the deceased in ordinary course of nature. It can further be seen from the evidence of this witness that the injuries sustained by both the deceased were possible by muddammal weapons – dharias. There is no evidence to suggest that the injuries suffered by both the deceased could be accidental. The injuries suffered by both the deceased could not be suicidal looking to their nature. In this view of the matter, it is concluded rightly by the trial Court that the death of the both the deceased was homicidal in nature. The contention of the learned advocate for the appellants that injuries sustained by both the accused were similar and are not possible by two muddammal dharias cannot be accepted in light of medical evidence and, therefore, the contention is rejected.

7. The complainant Jamniben has been examined at Exh.20. This witness is an eye witness of the incident in question. She states that the deceased

Gopisinh Dala Rathwa was her younger brother-in-law who came at her home on the day of incident. She further states that accused no.1 inflicted dharia blow on Gopisinh Dala Rathwa and accused no.2 inflicted dharia blow on Jiliya Dhediya Rathwa because of which they fell down. In her deposition, the complainant has specifically stated that accused no.1 had inflicted dharia blow on the nape of neck of Gopisinh Dalabhai and accused no.2 had inflicted dharia blow on the person of Jiliya Thediya Rathwa. From the deposition of this witness, it can be seen that she had talked with her husband and Sarpanch Desingbhai regarding filing of the complaint before the police. Looking to the deposition of this witness at Exh.20 as well as the complaint at Exh.40 wherein the said facts have been stated and, therefore, it cannot be said that the complainant has lodged a false complaint so as to implicate the accused in the offence in question. We do not find any infirmity in deposition of the eye witness.

8. So as to prove the case against the accused, the prosecution has also examined the witness Mangliben Thawrabhai at Exh.21. She also states the facts as has been narrated by her mother in her deposition at Exh.20. The prosecution has also examined the witness Varsingbhai Thawrabhai at Exh.23 whose evidence has not been accepted by the learned Sessions Judge. The contention of the learned advocate for the appellants that the witnesses are interested persons and their deposition may not be accepted cannot be accepted for the reason that their presence at the place of incident is natural. They

have stood the test of cross-examination and have remained unshaken. Even ignoring the evidence of Varsing Thawra, there is sufficient and dependable evidence on record to connect the appellants with offence and, therefore, the prosecution case becomes doubtful. In our view, this is not impossible. The recovery panchanama of clothes of both the deceased (Ex.27) is brought on record. The FSL report indicates that both the shirts carried blood of group `A' and therefore finding of `A' group of blood on all muddammal articles is natural and cannot be doubted.

9. It can be seen from the evidence of the Investigating Officer Mr.B.K.Pandar that the muddammal weapons are discovered from accused nos.1 and 2 vide discovery panchanama and they are described as dharia and palia. The said muddammal weapons recovered by the investigating officer was sent to the FSL for analysis vide Despatch Note at Exh.46. In the FSL report, it is stated that blood group `A' was found on blood stained mud, the clothes of both the deceased and the muddammal dharia. Therefore, having gone through the FSL report, it can be said that both the deceased were having similar blood group “A”.

10. It is contended by learned advocate Ms.Sagar that as per the FSL report, all articles were having the same blood group “A”.

11. Relying upon the decision of the Apex Court in the case of State of U.P. Vs. Anil Singh, reported

in AIR 1988 SC 1998, Mr.Dabhi submitted that some exaggeration or improvement by witness may be ignored unless it changes the texture of the evidence or prosecution case.

11.1 The Apex Court in the case of State of U.P. (supra) in para 15 has observed as under :

> "It is also our experience that invariably the witnesses add embroidery to prosecution story, perhaps for the fear of being disbelieved. But that is no ground to throw the case overboard, if true, in the main. If there is a ring of truth in the main, the case should not be rejected. It is the duty of the court to cull out the nuggets of truth from the evidence unless there is reason to believe that the inconsistencies or falsehood are so glaring as utterly to destroy confidence in the witnesses. It is necessary to remember that a Judge does not preside over a criminal trial merely to see that no innocent man is punished. A Judge also presides to see that a guilty man does not escape. One is as important as the other. Both are public duties which the Judge has to perform."

11.2. We have considered the evidence in light of the above decision and refuse to accept contention of Ms.Sagar on this aspect.

12. Having gone through the record of the case,

more particularly, the deposition of the witness Mangliben Thawrabhai Exh.21, this witness supports the version of the eye witness i.e. Jamniben at Exh.20. Further, as per the medical evidence, the injuries sustained by both the deceased are possible by the muddammal dharia and the said injuries were sufficient to cause death in ordinary course of nature. Therefore, as per the say of both the eye witnesses, both the deceased have sustained injuries by muddammal dharia which were inflicted by the appellants. The case against appellants is therefore, rightly held to have been established. We do not find any reason to take a different view of the matter in exercise of appellate powers. The appeal, therefore, has to fail.

13. In view of the aforesaid discussion and considering the above referred judgment, this appeal is dismissed. The judgment and order dated 29.8.2000 passed by learned Sessions Judge, Panchmahals at Godhra in Sessions Case No.319 of 1999 is hereby confirmed.

(A.L.Dave,J) (Sharad D.Dave,J)

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